

REMARKS

Status of the Application

Claims 1-7, 11-17, 19 and 21-27 are all the claims that have been examined in the instant application. Claims 1, 3-5, 7, 11, 13-15, 17, 19 and 21-25 stand rejected under 35 U.S.C. § 103(a) as obvious over JP 62-184357 in view of Knobel U.S. Patent No. 5,482,863 (both previously cited). Claims 2 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over JP 62-184357 in view of Knobel, U.S. Patent No. 5,482,863, as applied to claims 1 and 11, respectively above, and further in view of JP 64-27626 (all cited previously). Claims 6 and 16, 26, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over JP 62-184357 in view of Knobel U.S. Patent No. 5,482,863 as applied to claims 1 and 11, respectively above, and further in view of Makino et al, U.S. Patent No. 5,555,767 (all previously cited).

By this Amendment, Applicants are amending claims 1, 4, 5, 11, 14 and 15, and canceling claims 3, 6, 13, 16, 22 and 23.

Claim Rejections – 35 U.S.C. § 103(a)

A. Claims 1, 3-5, 7, 11, 13-15, 17, 19 and 21-25 are rejected under 35 U.S.C. § 103(a) as obvious over JP 62-184357 in view of Knobel U.S. Patent No. 5,482,863 (both previously cited).

B. Claims 2 and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JP 62-184357 in view of Knobel, U.S. Patent No. 5,482,863, as applied to claims 1 and 11, respectively above, and further in view of JP 64-27626 (all cited previously).

C. Claims 6 and 16, 26, and 27 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JP 62-184357 in view of Knobel U.S. Patent No. 5,482,863 as applied to claims 1 and 11, respectively above, and further in view of Makino et al, U.S. Patent No. 5,555,767 (all previously cited).

In response to the arguments submitted November 6, 2006, the Examiner asserts that JP '357 does not preclude any additional processing steps, and that any further processing steps may be gleaned from the prior art by one of ordinary skill in the art.

Further, the Examiner recognized that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. The Examiner asserts that evidence supporting the Examiner's prima facie burden has been shown in the pages 3-7 of the instant Office Action. Specifically, the Examiner asserts that Knobel shows that it is desirable to inject fluid from the pipette from two different positions thereby creating advantageous vortex flow action. Thus, the Examiner deems that it would have been obvious to one of ordinary skill in the art to provide for the method taught by the JP '357 reference with an additional step of moving the pipette to a different location prior to ejecting the fluid from the pipette so that additional vortex flows are produced in the container in order to more effective mixing effect.

Applicants respectfully submit that the unexpected results detailed in Applicants' Rule 132 Declaration filed December 24, 2003 would not have been obvious to one of ordinary skill in the art. Specifically, the liquid used in the experiment is the whole blood of a normal subject.

The whole blood from a normal subject usually has a hematocrit value, which is the value showing the solid content thereof, of about 40% as is well known.

The method set forth in JP '357 does not sufficiently stir a liquid with a high solid content as shown in conditions B and E of the experiment detailed in Applicants' Rule 132 Declaration filed December 24, 2003. Namely, the method cannot be used for stirring of a liquid with a high solid content.

On the other hand, the method as set forth in Knobel can stir a liquid with an extremely low solid content as is evident from the diagrams as set forth therein. In contrast, using the method claimed in claims 1 and 11, a liquid with a solid content of 40% or more can be stirred to a level equivalent to that achievable with a touch mixer via suction and discharge of a comparatively small amount of liquid. In other words, the method of claims 1 and 11 is capable of uniform stirring of a high solid content liquid by repeating suction and discharge of a comparatively small amount of liquid automatically over several times. Thus, Applicants submit that it is impossible for those skilled in the art to predict such effect only over JP '357 and Knobel.

Therefore, amended claims 1 and 11 are patentable over the applied art. Claims 2, 4, 5, 7, 12, 14, 15, 17, 19 and 24-27 are patentable at least by virtue of their dependency from amended claims 1 and 11.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

AMENDMENT UNDER 37 C.F.R. § 1.116
Application No.: 09/817,251

Attorney Docket No.: Q63803

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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